

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 671 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SHOBHRAJ N DANGI PATEL

Appearance:

MR KC SHAH, APP, for the appellant.

NOTICE SERVED for Respondent No. 6

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/07/98

ORAL JUDGEMENT

Heard Mr KC Shah, learned Addl. Public
Prosecutor.

This appeal is directed against the order of
acquittal recorded by the First Joint Judicial
Magistrate, First Class, Porbandar on 6.5.89 in Criminal
Case No.17028/88 under section 66(1)(b) and section 65(a)

and under section 65(e) read with section 81 of the Bombay Prohibition Act.

The alleged offence appears to have taken place on 29th October, 1988 at 1.30 hours. Shankarbhai Shanabhai Rathod, PSI, Porbandar received an information that from Rajasthan one truck along with one motor car piloting the truck were to come to Porbandar with illicit liquor in the truck. Therefore, a watch was arranged near Kalina Bridge and near Jhaveribaug Naka. At 1.30 hours one motor car bearing No.GRU-9894 passed through the road which was stopped by the Police and inquiry was made. Thereafter, after some time, one truck bearing No.RRE-1298 came which was also stopped by the Police and on search, it was found that there was illicit liquor in the truck. The truck and the car were taken to the compound of the DSP's Office and panch were called and panchnama was prepared. Respondent Nos.1, 2 & 3 were found from the truck while respondent Nos.4, 5 & 6 were found from the car alleged to have been piloting the truck. Chargesheet was filed before the learned JMFC, Porbandar and after full-fledged trial, the learned JMFC vide his order dated 6.5.89 came to believe that the above mentioned offences under Bombay Prohibition Act were not proved against the accused and hence acquitted the accused.

In this appeal, names of respondents Nos. 1 to 5 were struck off vide order of this Court dated 18th August, 1992 because the State was not able to serve respondents Nos.1 to 5. This appeal, therefore, remains against respondent No.6 i.e. original accused No.6 Luhana Prabhudas Savji Somaiya.

From the facts and circumstances of the case, it is clear that respondent No.6, Luhana Prabhudas Savji Somaiya was found from the car. Now, reading the whole evidence, it is nowhere proved that the car or the persons found from car had any criminal nexus between the truck and the illicit liquor found from the truck. In the evidence of the Investigating Officer Mr Shankerbhai Rathod, PW 2, Ex.19, he has clearly deposed that he received information that the car was piloting the truck on which the liquor is found. However, how and from whom such information was received could not be proved. On the contrary, it is admitted by the Investigating Officer that nothing was found illegal or objectionable from the car. No evidence was found that the persons sitting in the car had any connection whatsoever with the liquor seized and with the truck. Since, undoubtedly, though respondent No.6 was found from the motor car, there is no

iota of evidence of his having any criminal nexus with the illicit liquor seized from the truck, there is no case against respondent N.6. Hence the learned JMFC rightly acquitted respondent No.6 and the order of acquittal does not warrant any interference by this Court in this criminal appeal. Accordingly, this appeal is dismissed.

.....